

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

DEC 18 2013

JULIA C. DUDLEY, CLERK
BY: 
DEPUTY CLERK

BRANDON JEROD SMITH,)	
)	Civil Action No. 7:13CV00060
Plaintiff,)	
)	
v.)	<u>FINAL ORDER</u>
)	
OFFICER OWENS, et al.,)	By: Samuel G. Wilson
)	United States District Judge
Defendants.)	
)	

This case was referred pursuant to 28 U.S.C. § 636(b)(1)(B) to the Honorable Pamela M. Sargent, United States Magistrate Judge. The Magistrate Judge held an evidentiary hearing on September 19, 2013 and has filed a report recommending that the court enter judgment in favor of the defendants. (Docket Item No. 60.) The *pro se* plaintiff, Brandon Jerod Smith, has objected to the report, mostly raising issues of witness credibility that he either addressed or had the opportunity to address at the hearing. (Docket Item No. 65). Smith has also objected to the Magistrate Judge's order of November 19, 2013 that denied Smith's post-hearing motion to review rapid eye video,¹ denied his fourth motion for appointment of counsel,² and granted the defendants' motion for a protective order barring further discovery. (Docket Item No. 61.)

Having reviewed the report, the November 19, 2013 Order, Smith's objections thereto, pertinent

¹ The defendants maintain they produced the rapid eye video at the September 19, 2013 hearing.

² Smith also raised his lack of counsel in his objections to the Magistrate Judge's report. As set out in the Magistrate Judge's order denying Smith's first motion to appoint counsel (Docket Item No. 21), prisoners have no statutory right to counsel in civil cases. Instead, the court has discretion as to whether to request that an attorney represent a person unable to afford counsel. 28 U.S.C. § 1915(e)(1). The Magistrate Judge considered the facts and circumstances of Smith's case and found it was not in the interest of justice to request counsel for Smith. (See Docket Item No. 21 (noting uncomplicated factual and legal issues and Smith's demonstrated ability to adequately represent his interests).) In addition, a review of the evidence shows the Magistrate Judge was most careful in her examination of the entire record, was both patient and indulgent with Smith in giving him every opportunity to present his case, and, although not Smith's advocate, was persistent in her efforts to develop the record in a careful and appropriate manner such that Smith's claims were adequately presented. See, e.g., *Bowman v. White*, 388 F.2d 756, 761 (4th Cir. 1968).

portions of the record *de novo*, and the relevant law, the court agrees with the Magistrate Judge's recommendation to enter judgment in favor of the defendants and her November 19, 2013 rulings.

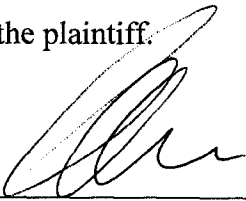
Accordingly, it is hereby **ORDERED** and **ADJUDGED** that:

- 1) the Magistrate Judge's Report and Recommendation (Docket Item No. 60) is **ADOPTED**;
- 2) Smith's Objections to Report and Recommendation (Docket Item No. 65) are **OVERRULED**;
- 3) Smith's Objections to Magistrate Judge's Order (Docket Item No. 61) are **OVERRULED**; and
- 4) judgment is entered in favor of the defendants Officer Owens, Officer Dixon, and Lieutenant Carico, and against the plaintiff Brandon Jerod Smith.

All matters having been resolved, this case is **ORDERED STRICKEN** from the court's docket.

The Clerk is **DIRECTED** to mail a copy of this order to the plaintiff.

ENTER: This December 18th, 2013.


UNITED STATES DISTRICT JUDGE